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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,180	02/25/2004	Roger W. Meads	MEADS-08913	2384

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EXAMINER	
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ART UNIT	**PAPER NUMBER**
2855	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/786,180	MEADS ET AL.	
	Examiner	Art Unit	
	Gail Verbitsky	2855	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 March 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9,11-13,18,19 and 21-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9,11-13,18,19 and 21-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 103 that form the basis for the rejections under this section made in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, 6, 8-9, 11-13, 21-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace et al. (U.S. 4865044) [hereinafter Wallace] and Ridenour (U.S. 6113539) and Kennedy et al. (U.S. 5203345) [hereinafter Kennedy].

Wallace discloses a device in the field of applicant's endeavor comprising an implant, an implantable temperature device implanted in an ear of a cow including a thermistor 22 for measuring body temperature, a signal receiver/ transmitter 20,
a processor, an animal identification device (digital chip) attachable to a body of an animal,
a computer readable medium comprising a database of temperature information, and
a remote/ ambient temperature sensor 23 for measuring ambient temperature of a cow compartment,
wherein said processor compares temperature information received from said implantable temperature device and said remote temperature sensor with said database of temperature information and said animal identification device receives messages (check up – temperature measurement message, please note that a message of measuring temperature is considered to be a health check-up message) from said processor and generates a visual signal/ display, wherein said signal is detectable on the outside of the body/ remote of the animal upon receipt of the signal /message from the processor and wherein said implantable temperature device and animal identification device are configured for communication with the remotely located processor. Obtaining the cow temperature would suggest that the temperature should be analyzed by comparing with a standard temperature for the animal (refer, for example, to a human patient's who's temperature is automatically or mentally/by means of a health provider compared to the human normal/ standard temperature of 37 degrees C).

Wallace does not explicitly teach a two-way communication with a computer/ computer readable medium and that the alarm/ display is on the body of the cow. Wallace does not explicitly teach to continuously measure the temperature.

Ridenour discloses in Figs. 5-9 a device in the field of applicant's endeavor wherein a microprocessor send signal to a remote computer, the computer/ computer readable medium analyses the signal and remotely instructs the microprocessor to illuminate an alarm light/ display on the body of the cow.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Wallace, so as to have a display on the body of the cow, the display controllable by a remote computer, so as to allow the operator to spot the cow having an abnormal temperature out of the plurality of the cow in the parlor.

Kennedy discloses the device in the field of applicant's endeavor and suggests that the cow internal temperature should be measured/ monitored continuously (col. 1, line 27) in order to determine the cow's estrus temperature. This would suggest that the temperature fluctuations could be interpreted as an estrus.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Wallace, so as to monitor the temperature continuously, as taught by Kennedy, in order to predict the occurrence of estrus, as already suggested by Kennedy.

With respect to claim 21-22: the particular time for the time extended period, i.e., 1 hour or less than a year, absent any criticality, is only considered to be the "preferred" or "optimum" time range that a person having ordinary skill in the art at the time the invention was made would have been able to determine using routine experimentation based, among other things, the cow physiology, etc. See in re Boesch, 205 USPQ 215 (CCPA 1980).

With respect to claim 22: it is inherent that the core temperature measurements could be compared to each other.

With respect to claim 25: taking more than one temperature measurement for a cow could be considered "creating a temperature data/ trend over time/ over extended time".

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace, Ridenour and Kennedy as applied to claims 1-4, 6, 8-9, 11-13, 21-26 above, and further in view of Hamel et al. (U.S. 6622567) [hereinafter Hamel].

Wallace, Ridenour and Kennedy disclose the system/ method as stated above.

They do not explicitly disclose that the transmission is a RFID transmission of claim 5.

Hamel discloses a device wherein the information has been transmitted using a RFID chip.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Wallace, Ridenour and Kennedy, so as to use RFID wireless communication device, as taught by Han, because both of this method are using wireless communication by means of radio frequency, as well known in the art, and because both of them are alternate types of the transmission means which will perform the same function, if one is replaced with the other.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wallace, Ridenour and Kennedy, as applied to claims 1-4, 6, 8-9, 11-13, 21-26 above, and further in view of Han et al. (U.S. 6835553) [hereinafter Han].

Wallace, Ridenour and Kennedy disclose the system/ method as stated above.

They do not explicitly teach the limitations of claim 7.

Han discloses a system/ method comprising wirelessly transmitting a sensor data, an identification signal by means of Bluetooth wireless protocol and PDA (Personal Data Assistance) wireless communication device.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system/ method, disclosed by Wallace, Ridenour and Kennedy, so as to use Bluetooth wireless protocol, as taught by Han, in order to transmit and interpret data with high accuracy and low noise, and determine a patient's location by means of a

known standard internet program, so as to minimize manufacturing costs by using a known program.

Response to Arguments

Applicant's arguments filed on 03/04/2009 have been fully considered but they are moot in view of the instant rejection necessitated by the amendment.

Applicant states that Wallace and Kennedy are not combinable because Kennedy teaches away from attaching the sensing device to an animal ear skin.
This argument is not persuasive because Kennedy teaches away from attaching the sensor to the skin, however, Kennedy does not teach away from implanting the sensor inside the ear or inside the body.
Kennedy does not explicitly teach this particular limitation (implanting inside the ear), however, in the rejection on the merits, the Examiner uses Kennedy as a secondary reference only for its teaching of obtaining measurements continuously. Wallace teaches implanting the sensor inside the ear. Kennedy teaching implanting sensor inside the body of a cow.
In addition , in claim 3, Applicant does not positively claims "implanting in the ear). The sensor, according to claim 3 could be implanted in the eyelid, vulva or ear.

Zartman (U.S. RE.32758) teaches to implant a sensor inside a cow ear or intravaginally and monitor the temperature continuously for about 50 days (extended period of time) for onset of estrus.
Laurence et al. (U.S. 7336987) teaches implanting a temperature sensor inside a cow ear and monitoring temperature.
Anderson (U.S. 7026941) teaches implanting a temperature sensor inside a cow ear and wirelessly monitoring the cow temperature (rate of change over time – over extended period of time) for onset of estrus.
Guice et al. (U.S. 20020010390) teaches implanting a temperature sensor inside a cow ear and wirelessly monitoring the cow temperature over time for onset of estrus and wirelessly transmitting temperature data.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

Stafford et al. (U.S. 5482008) disclose a device in the field of applicant's endeavor comprising a system having a temperature-sensing device (microchip) 32 and a microchip code circuit (identification device) 5.

Wallace et al. (U.S. 4865044) [hereinafter Wallace] discloses a system comprising an implantable (implant) in a cow ear temperature sensing device (transmitter) comprising an identification number generated/ processed by an encoder (processor) to be transmitted along with a temperature sensed, a signal receiver comprises a decoder (device receiving a bit rate/ digital access device from the transmitter, and means (identification device) comprising identification code (col. 2, lines 35-46), thus, means in the implanted transmitter that used for identification or location. Also, the fact that Wallace discloses the identification code/ number would suggest that the there is an identification device bearing/ storing the identification code/ number, and that the information should become available to an operator one way or another, i.e., as visual, auditory or visual/ auditory signal, so as to correlate the temperature to the particular cow.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gail Verbitsky whose telephone number is 571/ 272-2253. The examiner can normally be reached on 7:30 to 4:00 ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571/ 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GKV

Gail Verbitsky
Primary Patent Examiner, TC 2800

May 07, 2009

/Gail Verbitsky/
Primary Examiner, Art Unit 2855